PUBLICATION UPDATE

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LexisNexis® Practice Guide: Florida Civil Discovery

Publication 1367 Release 41 May 2025

HIGHLIGHTS

- This release adds further refinements and new cases to the treatise's comprehensive coverage of Florida civil procedure.
- Updated authoritative commentary by civil litigation expert Ralph Artigliere on the Florida Rules of Civil Procedure.
- Many new Florida civil procedure cases analyzed and explained to assist in civil litigation.

AMENDMENTS TO FLORIDA RULES OF PROCEDURE AND STATUTES

Amendments to the Florida Rules of General Practice and Judicial Administration

In the case of In re Amendments to Fla. Rule of Gen. Prac. & Judicial Admin. 2.535., 2024 Fla. LEXIS 1770 (Fla. November 7, 2024), the Supreme Court amended Fla. R. Gen. Prac. & Jud. Admin. 2.535 in many details with regard to specifications for transcripts and depositions filed with the Court. Transcripts of all judicial proceedings, including depositions, must be uniform in all courts throughout the state and must be stored in an electronic format sufficient to communicate the information contained in proceedings in a readable format, and capable of being transmitted electronically in Portable Document Format ("PDF") as set forth in Fla. R. Gen. Prac. & Jud. Admin. 2.525 and in compliance with all requirements set by the portal or other authorized electronic filing system. Rule 5.535 also sets out specific requirements in size, font, margins, and other details. *See* § 6.21.

Amendments to the Florida Rules of Civil Procedure

There were massive changes to the Florida Rules of Civil Procedure this term, and the complexity of the changes is exacerbated because the Supreme Court made extensive amendments in two cases decided on May 23, 2024 and then made further amendments to some of the same rules after comments were received in two additional cases dated December 5, 2024. These changes are summarized here with the cases listed in succession by date to allow the reader to comprehend the extent and implications of the changes. The changes are implemented in this release as noted by the locations cited below. Please note that some minor changes may be updated in the release in addition to those reflected in the cited sections. *The amendments are effective January 1, 2025, and apply to all cases pending at that time, except that the requirements of Fla. R. Civ. P. 1.280(a)(Initial Discovery Disclosures) shall not apply to any action commenced before the effective date. Case management orders already in effect on January 1, 2025, continue to govern pending actions; however, any extensions of deadlines specified in those existing case management orders are governed by amended Fla. R. Civ. P. 1.200 or amended rule 1.201. For actions commenced before January 1, 2025, and in which the court has not issued a case management order by that date, a case management order must be issued by April 4, 2025.*

In the case of In re Amendments to Fla. Rules of Civil Proc., 2024 Fla. LEXIS 793 (Fla. May 23, 2024), the Florida Supreme Court issued amendments to the Florida Rules of Civil Procedure focusing on improving the efficiency and management of civil cases. These changes are effective January 1, 2025. Here is a summary of the key adopted and amended rules, along with the reasons behind the amendments:

1. Fla. R. Civ. P. 1.200 (Case Management; Pretrial Procedure): Rule 1.200 has been entirely rewritten to require that each civil case be assigned to one of three case management tracks (complex, general, or streamlined) within 120 days. The amendments were intended to ensure early and active case management tailored to the complexity of each case, allowing circuits to customize their processes based on volume, resources, and available automation. *See* §§ 1.07; 1.13; 3.05[2]; 5.04[1A]; 5.05[1]; 5.05[2]; 6.04[5]; 12.19; 12.44; 13.02; 13.08.
2. Fla. R. Civ. P. 1.201 (Complex Litigation): Fla. R. Civ. P. 1.201 was amended to provide that a court may (but is not required to) hold a hearing to determine whether a case should be designated as complex, that "[t]he parties must notify the court immediately if a

case management conference or hearing time becomes unnecessary," and to expressly state that motions for trial continuances are governed by Fla. R. Civ. P. 1.460. These changes were made to streamline the management of complex cases and reduce unnecessary hearings, ensuring efficient resolution. *See* §§ 1.02; 1.07; 1.42; 1.45; 3.05[2]; 5.04[1A]; 5.05[2]; 6.04[5]; 13.02.

3. Fla. R. Civ. P. 1.280 (General Provisions Governing Discovery): The new additions to the scope of discovery rule incorporate the proportionality language from Federal Rule of Civil Procedure 26(b)(1) for all discovery. Proportionality language for electronically stored information remains in the rule as well. Additional changes require initial discovery disclosures within 60 days of serving the complaint or joinder and certification of discovery by signature. These changes are to fair and efficient discovery proportional to the needs of the case, aligning with federal standards. The Court also added initial discovery disclosure requirements. *See* §§ 1.03; 2.02; 2.03; 2.03A 2.05; 2.13; 2.14; 2.16; 2.17[1]; [2]; 2.18; 2.21; 2.24[2][a]; 2.26[4][b]; 2.26[8]; 2.27; 3.05[1]; [2]; [9]; 3.08[2]; [3]; [4]; 3.10; 4.13; 5.02; 5.03; 5.04[1A]; 5.05[1]; 5.11; 5.12[2]; 5.12[4]; 5.17[1]; 5.18; 5.19; 6.05[1]; [4]; 6.14; 6.16; 7.17; 7.41; 8.09[5]; 9.05[9][g]; 10.04; 10.19; 10.55; 11.11[1]; 12.31; 12.34; 13.02; 13.03; 13.05; 13.07; 13.08; 13.09[1]; 14.04; 14.15; 14.16A; 14.20; 15.15[2].

4. Fla. R. Civ. P. 1.440 (Setting Action for Trial): These amendments eliminate the "at issue" requirement and mandate that courts enter an order fixing the trial period 45 days before any projected trial period in a case management order. The amendments are to streamline the process of setting cases for trial, ensuring timely scheduling and resolution.

5. Fla. R. Civ. P. 1.460 (Motions to Continue Trial): Rule 1.460 is rewritten to state that motions to continue trial are disfavored and should rarely be granted and to specify requirements for such motions. These changes are to discourage unnecessary continuances and ensure trials proceed as scheduled, enhancing court efficiency.

For a full accounting of the rule changes, refer to In re Amendments

to Fla. Rules of Civil Proc., 2024 Fla. LEXIS 793 (Fla. May 23, 2024). The amendments were adopted to create a framework for active case management of civil cases, emphasizing adherence to deadlines established early based on case complexity. This initiative follows the establishment of the Workgroup on Improved Resolution of Civil Cases in 2019, which aimed to enhance civil case management processes to deliver timely, cost-efficient, and accountable justice while maintaining due process. The amendments incorporate elements from federal rules to ensure proportionality in discovery and streamline case management, ultimately promoting the fair and timely resolution of civil cases. The changes provide flexibility for circuits to customize their processes according to their unique needs and resources, reflecting a commitment to continuous improvement in the administration of justice.

Because the above amendments adopted were substantially different than the alternatives submitted to the Court, interested persons were given time to file comments. After considering the comments, the response, and oral argument, the Court issued another opinion with further amendments to the rules in In re Amendments to Fla. Rules of Civil Proc., 2024 Fla. LEXIS 1914 (Dec. 5, 2024). The amendments left in place almost all the case management, proportionality, and discovery amendments that were adopted in the decision of May 23, 2024. The Court did, however, adopt additional amendments to make the May 2024 proportionality and discovery changes more effective as well as amendments to resolve potential inconsistencies. These changes are effective January 1, 2025. Here is a summary of the amendments and, where appropriate, indication where the changes are located in this update.

1. The Court added Commentary to Fla. R. Civ. P. 1.280 to explain that the Court has adopted almost all the text of federal rule 26(b)(1) and that it is "to be construed and applied in accordance with the federal proportionality standard." This Court Commentary is intended to lead practitioners and judges to look to federal history and precedents when applying proportionality. To address the lack of coordination between the timing of initial discovery disclosures and the timing of the first set of discovery requests, the Court amended Fla. R. Civ. P. 1.280 to state that "[a] party may not seek discovery from any source before that party's initial disclosure obligations are satisfied, except when authorized by stipulation or by court order." *See* §§ 2.02; 2.03; 2.03A; 2.05; 2.11; 2.14; 3.05[2]; 4.13[1]; 5.02; 5.03; 5.04[1][A]; 5.12[2]; 6.05[1]; 6.14; 6.16; 7.17; 7.41; 8.09[5]; 9.05[9][g]; 10.04; 11.11[1]; 12.31;

13.02; 13.05; 13.08; 13.09[1]; 14.04; 14.15; 14.16A; 14.20; 15.15[2]; 15.46[2].

2. To avoid discovery objections that just generally cite proportionality without any further explanation, the Court amended Fla. R. Civ P. 1.340 and 1.350 to require providing the grounds for objecting "with specificity," "including the reasons." In Fla. R. Civ. P. 1.340, the Court added a Court Commentary to explain that "[a]ny use of standard interrogatories must be adjusted for proportional discovery." The Court will be referring the possible revision of the standard interrogatories to the appropriate Florida Bar committee. Also, the grounds for objecting to an interrogatory must be stated with specificity, including the reasons. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure. In Fla. R Civ. P. 1.350, the Court added language to provide that "[a]n objection must state whether any responsive materials are being withheld on the basis of that objection." Adding this federal sentence to Florida's rule was done to eliminate resources being needlessly wasted on objections where no materials are being withheld. The Court added the next sentence from Federal Rule of Civil Procedure 34, namely that "[a]n objection to part of a request must specify the part and permit inspection of the rest" to help discovery progress when there is only an objection to part of a request. *See* §§ 5.02; 5.03; 5.24; 9.05[2][a]; [8][c]; [9][a]; [g]; 9.08[2]; 9.10[1][a]; [b]; 9.14[1][a]; [c]; 9.17[1]; 9.19[2]; [4][b]; 9.20[2][d]; [2][e]; 9.22[2][i]; 9.30; 10.50; 10.52; 10.54; 10.55; 14.13; 15.04A.

3. Under amended Rule 1.280(g), a party who has made a disclosure under Rule 1.280 or who has responded to an interrogatory, a request for production, or a request for admission must supplement or correct its disclosure or response (1) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or (2) as ordered by the court. The Court amended Fla. R. Civ. P. 1.380 to provide an enforcement mechanism for the initial discovery disclo-

sure and supplemental discovery obligations that the Court added in rule 1.280. The amendments to rule 1.380 also detail the sanctions available when a party fails to disclose or to supplement an earlier response. The amendments include a sanction for a violation of the discovery certification that the Court added in Fla. R. Civ. P. 1.280. This change was made to make the certification requirement more meaningful and hopefully more effective in eliminating noncompliant discovery. *See* §§ 2.03; 5.02; 5.03; 5.18; 9.21[1]; 10.54A; 12.34.

4. In addition to the above changes relating to discovery and proportionality, the Court adopted amendments to correct potential inconsistencies. The Court added "filing and service of motions for summary judgment" to the list of deadlines that rule 1.200(d)(2) requires to be in case management orders. The Court adjusted the conferral language in Fla. R. Civ. P. 1.201 and 1.460 to account for new Florida Rule of Civil Procedure 1.202 (Conferral Prior to Filing Motions). Language was added to Fla. R. Civ. P. 1.201 to clarify that, while rule 1.202 requires conferral before a motion is filed, Fla. R. Civ. P. 1.201(c)(4) is intended to require a conferral closer to the hearing date to ensure that the reserved hearing time is still necessary. However, the Court deleted the conferral language in Fla. R. Civ. P. 1.460(d) as it is duplicative of Fla. R. Civ. P. 1.202. *See* §§ 1.02; 5.02; 5.03; 5.05[2]; 13.02.

5. The Court exempted trial continuances and extensions of deadlines in case management orders from the general extension of time rule, Fla. R. Civ. P. 1.090. *See* §§ 5.02; 5.03; 9.16[4]; 12.23; Form 12.68.

For a full accounting of the rule changes, refer to In re Amendments to Fla. Rules of Civil Proc., 2024 Fla. LEXIS 1914 (Dec. 5, 2024).

In the case of In re Amendments to Fla. Rule of Civil Proc. 1.510 & New Fla. Rule of Civil Proc. 1.202, 2024 Fla. LEXIS 791 (Fla. May 23, 2024), the Florida Supreme Court amended Fla. R. Civ. P. 1.510 (Summary Judgment) and adopted new Fla. R. Civ. P. 1.202 (Conferral Prior to Filing Motions). These changes are effective January 1, 2025.

Summary of Amendments:

1. Amendment to Fla. R. Civ. P. 1.510 (Summary Judgment):

The proponent must serve the motion for summary judgment consistent with the deadlines specified in

the case management order. The deadline to respond to a motion for summary judgment is now tied to the date of service of the motion rather than the hearing date. Responses are due no later than 60 days after the service of the motion for summary judgment. This adjustment is intended to ensure adherence to case management deadlines as specified in Fla. R. Civ. P. 1.200 (Case Management; Pretrial Procedure) and Fla. R. Civ. P. 1.201 (Complex Litigation). Please note that Rules 1.200 and 1.201 were also provisionally amended in the case of In re Amendments to Fla. Rules of Civ. P., 24 Fla LEXIS 793 (Fla. May 23, 2024).

2. Adoption of New Fla. R. Civ. P. 1.202 (Conferral Prior to Filing Motions):

Mandatory Conferral: Before filing non-dispositive motions (excluding motions for injunctive relief, judgment on the pleadings, summary judgment, dismissal, class action maintenance, failure to state a claim, or involuntary dismissal), the movant must confer with the opposing party in a good-faith effort to resolve the issues raised in the motion. The movant must file a certificate with the motion, substantially in the form set forth in the Rule. The certificate requirement was amended on December 5, 2024 (Content of current certificate is summarized below). *See* §§ 2.03; 2.09; 2.10[2]; 5.05[2] and FORMS 1.92; 1.94; 1.114; 2.30; 2.34; 2.37; 2.39; 2.40; 2.43; 2.46; 2.51; 2.53; 3.1.1; 3.12.4; 3.13.1–.5; 3.14.1–.2; 3.15.1; 3.16.1; 3.16.5; 3.16.8; 3.16.10; 3.17.1–.2; 3.18.2–.3; 4.18; 4.20; 5.55; 5.62; 6.30; 6.35; 6.37; 6.44; 6.45; 6.47; 6.48.1; 6.50; 6.52; 6.54; 6.56; 6.58; 6.63; 7.47.2; 7.51.2; 7.52.2; 7.53.2; 7.57; 7.58.2; 7.59.2; 7.60; 7.63; 8.14.2; 8.17; 9.32.1; 9.33.2; 9.33.3; 9.33.4; 9.33.8; 11.58; 11.61; 11.64; 12.66; 12.68; 12.70; 12.71; 13.17; 13.19; 14.26; 14.27; 14.32; 15.24; 15.28; 15.30; 15.31; 15.32; 15.33; 15.35; 15.36; 15.37; 16.42.

These amendments were made to support civil case management efforts, ensuring that deadlines are met and that parties engage in good-faith efforts to resolve disputes before involving the court. By modifying the response deadline for summary judgments and introducing a conferral requirement for certain motions, the court aims to streamline the litigation process and reduce unnecessary delays.

In the case of In re Amendments to Fla. Rule of Civil Proc. 1.510 & New Fla. Rule of Civil Proc. 1.202, 2024 Fla. LEXIS 1917, 2024 WL 4982906 (Fla. Dec. 5, 2024), the Florida Supreme Court further amended Fla. R. Civ. P. 1.510 and 1.202 in response to comments solicited in the May 23 opinion. The effective date remains January 1, 2025. This means that the provisions of amended Fla. R. Civ. P. 1.510 and new rule 1.202 will govern motions filed on or after the effective date but will not apply to motions filed before that date.

1. The Court further amended Fla. R. Civ. P. 1.510 to provide that a motion for summary judgment must be filed and served “consistent with

any court-ordered deadlines." And a response must be served "[n]o later than 40 days after service of the motion for summary judgment." Further, to ensure that parties and courts have time to prepare for summary judgment hearings, we amend rule 1.510 to specify that "[a]ny hearing on a motion for summary judgment must be set for a date at least 10 days after the deadline for serving a response, unless the parties stipulate or the court orders otherwise."

2. For rule 1.202, the Court expanded the motions that are exempt from the duty to confer, listing the exempt motions in a separate subdivision. The Court also added a sentence to provide that the rule's requirements do not apply when the movant or the nonmovant is unrepresented. In the required certificate of conferral form, the Court adds an option for certifying that conferral is not required under the rule. The Court amended Fla. R. Civ. P. 1.202 to explain that the failure to comply with the rule's conferral requirements "may result in an appropriate sanction, including denial of a motion without prejudice" and that the "purposeful evasion" of conferral communication "may result in an appropriate sanction." Here is the form certificate of conferral: "*I certify that prior to filing this motion, I discussed the relief requested in this motion by [method of communication and date] with the opposing party and [the opposing party (agrees or disagrees) on the resolution of all or part of the motion] OR [the opposing party did not respond (describing with particularity all of the efforts undertaken to accomplish dialogue with the opposing party prior to filing the motion)].]OR [I certify that conferral prior to filing is not required under Fla. R. Civ. P. 1.202.*]" *See* §§ 2.03; 2.09; 2.10[2]; 5.05[2] and FORMS 1.92; 1.94; 1.114; 2.30; 2.34; 2.37; 2.39; 2.40; 2.43; 2.46; 2.51; 2.53; 3.1.1; 3.12.4; 3.13.1–.5; 3.14.1–.2; 3.15.1; 3.16.1; 3.16.5; 3.16.8; 3.16.10; 3.17.1–.2; 3.18.2–.3; 4.18; 4.20; 5.55; 5.62; 6.30; 6.35; 6.37; 6.44; 6.45; 6.47; 6.48.1; 6.50; 6.52; 6.54; 6.56; 6.58; 6.63; 7.47.2; 7.51.2; 7.52.2; 7.53.2; 7.57; 7.58.2; 7.59.2; 7.60; 7.63; 8.14.2; 8.17; 9.32.1; 9.33.2; 9.33.3; 9.33.4; 9.33.8; 11.58; 11.61; 11.64; 12.66; 12.68; 12.70; 12.71; 13.17; 13.19; 14.26; 14.27; 14.32; 15.24; 15.28; 15.30; 15.31; 15.32; 15.33; 15.35; 15.36; 15.37; 16.42.

Amendments to the Florida Rules of General Practice and Judicial Administration

In the case of In re Amendments to Fla. Rules of Gen. Prac. & Judicial Admin., 2024 Fla. LEXIS 1374 (Fla. August 29, 2024), the Florida Supreme Court created or amended several rules. Fla. R. Gen. Prac. & Jud. Admin. 2.150 was created to say that self-represented litigants must follow all rules of court procedure. Fla. R. Gen. Prac. & Jud. Admin. 2.425 was amended to adjust the remedies as follows: The court may order remedies, sanctions, or both for a violation of subdivision 2.425 (a) (Limitation for Court Filings) on motion by a party or interested person or sua

sponte by the court. The court may impose sanctions if the filing was not made in good faith after notice and an opportunity to respond. *See* §§ 1.02; 2.05; 2.10[3]; 2.26[4][b]; 3.05[3][a]; 5.18; 6.29; 8.09[5]; 9.18[1]; 10.16A; 10.59; 10.61; 14.09; 15.23A.

Amendments to the Florida Bar Rules of Professional Responsibility

In the case of In re Amendments to Rules Regulating the Fla. Bar, 2024 Fla. LEXIS 1373 (Fla. August 29, 2024), the Florida Supreme Court amended the Comments to Fla. R. Reg. Fla. Bar 4-1.1, 4-1.6, 4-5.1, and 4-5.3, adding a requirements concerning the use of generative artificial intelligence. The Comment to Rules Regulating Fla. Bar 4-1.1 was amended adding a warning about the necessity to take care in using generative artificial intelligence. Warnings about care involving generative artificial intelligence were also added to Rules 4-1.6 (Confidentiality of Information: requiring a lawyer to act competently to safeguard information relating to the representation of a client by being aware that generative artificial intelligence may create risks to the lawyer's duty of confidentiality); 4-5.1 (Responsibilities of partners, managers, and supervisory Lawyers to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct with regard to generative artificial intelligence); 4-5.3 (Responsibilities Regarding Nonlawyer Assistants, requiring a lawyer should to consider safeguards when assistants use technologies such as generative artificial intelligence). *See* §§ 1.02; 3.05[3][a]; 5.04[1]; 5.18; 5.27; 6.29; 10.59; 10.61.

CASES OF NOTE THROUGH DECEMBER 31, 2024 INCLUDED IN THIS RELEASE

Amendment 7

In Regala v. McDonald, 2024 Fla. App. LEXIS 6913 (Fla. 6th DCA Sep. 6. 2024), the Sixth District Court held that it was not bound by the dicta of W. Fla. Reg'l Med. Ctr., Inc. v. See, 79 So. 3d 1 (Fla. 2012), pertaining to Amendment 7, and the Sixth District Court concluded that merely asserting a cause of action does not establish the existence of an adverse medical incident for purposes of invoking Amendment 7. Accordingly the Court held that documents otherwise protected under the Peer Review Statutes do not become discoverable under Amendment 7 until the existence of an adverse medical incident has actually been established. In doing so, the Court certified the issue to the Supreme Court as question of great public importance. *See* §§ 1.42; 2.26[9][a]; 3.05[6].

Apex Doctrine for Depositions of CEO

In McLane Foodservice, Inc. v. Wool, 2024 Fla. App. LEXIS 7835 (Fla. 3d DCA October 2, 2024), the plaintiff sought to take the deposition of the corporate president of McLane, a multibillion-dollar nationwide company that distributes food

and foodservice items to restaurants throughout the United States. The deposition was requested to answer depositions about a pair of distribution contracts which the president said by affidavit that she signed but did not have any personal knowledge or unique information pertaining to the facts or issues being litigated. The trial court compelled the deposition and the Third DCA reversed based on Fla. R. Civ. P. 1.280(h) (now 1.280(i)) on the grounds that the plaintiff failed to demonstrate that she exhausted other discovery, that such discovery was inadequate, and that the president has unique, personal knowledge of discoverable information. *See* § 6.05[1].

Deposition of Party's Attorney

In Garcia v. Yellow CAB Co., 49 Fla. L. Weekly D1909 (Fla. 3d DCA September 18, 2024), plaintiff sought the deposition of Yellow Cab's corporate representative with the most knowledge of the business operations and assets of Yellow Cab, and the corporate representative was intentionally or unintentionally devoid of any knowledge of the corporation. The only person with knowledge of the relevant circumstances was the corporate attorney. Under those circumstances, the trial court should have permitted discovery of this information from the corporate attorney according to the Third District Court. *See* § 6.05[1].

Dismissal for Fraud on the Court

Appellate courts have concluded that a trial court's dismissal of a claim for fraud upon the court is reviewed under a more stringent abuse of discretion standard. Some have even broken that standard down to its component parts. In which the preliminary determination is whether the trial court's findings are supported by competent, substantial evidence. If that standard is met, then the court reviews the trial court's legal conclusions for abuse of discretion. But in doing so they have linked a standard of review to a particular kind of ruling, which often leads to a generalization that is not helpful according to Pro. Choice Remediation, Inc. v. Old Dominion Ins. Co., 2024 Fla. App. LEXIS 9206 * (Fla. 1st DCA November 27, 2024). Accordingly, the First District Court analyzed the order on appeal in *Pro. Choice* through the components that make it up and applied the traditional standards of review for each. If the appeal hinges on the lower tribunal's (1) findings of fact, the review is for competent, substantial evidence; (2) conclusions of law, the review is de novo; and (3) remedy, the review is abuse of discretion. *See* § 15.05A.

In Epps v. Maro, 2024 Fla. App. LEXIS 8779 (5th DCA Nov. 1, 2024), the trial court issued a detailed twelve-page order including competent, substantial evidence in the record which supports the trial court's findings that Appellant intentionally provided false testimony and misleading discovery responses in an effort to hamper Appellees' efforts to investigate the cause, nature, and extent of Appellant's injuries, medical conditions, and disability. The trial court properly concluded that the re-

cord evidence clearly and convincingly demonstrates that Appellant "sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability to impartially adjudicate a matter." *See* § 15.05A.

Expert Witnesses

In addition to Daubert limitations, Florida law generally precludes expert testimony where it constitutes an opinion on such a question of law. See § 90.702, Fla. Stat. (2021) (permitting expert testimony in the form of an opinion if based on facts or data and produced by reliable principles or methods, and the principles are applied reliably to the facts); Citizens of State v. Fay, 2024 Fla. LEXIS 1792 (Fla. November 14, 2024) (because an expert's interpretation of questions of law and legal statutes is impermissible, Kollen's testimony was properly excluded). *See* §§ 1.81; 2.17[1].

In the litigation context, biomechanical engineers typically are qualified to opine about an accident's forces and the general types of injuries those forces may generate. They are not legally qualified to render opinions about the precise cause of a specific injury because biomechanical engineers lack the medical training necessary to identify the different tolerance levels and preexisting medical conditions of individuals, both of which could have an effect on what injuries resulted from an accident. In Clark v. Hahn, 2024 Fla. App. LEXIS 9850 (5th DCA Dec. 19, 2024), the Fifth DCA held that, while the biomechanical expert may discuss the forces generated by an accident and how a hypothetical person's body will respond to those forces, they are not qualified to render medical opinions regarding the precise cause of a specific injury. *See* § 1.81.

In Seven Rests., LLC v. Tulecki, 391 So. 3d 949 (Fla. 4th DCA 2024), the Fourth district court held that the trial court abused its discretion by allowing the plaintiff to present a new mid-trial expert opinion on the cause of his colon perforation, long after the discovery cut-off had passed. *See* §§ 2.17[1]; 3.08[3]; 13.05; 15.05.

Financial Records Discovery

Where the disclosure of financial records is "reasonably calculated to lead to the discovery of admissible evidence," under Fla. R. Civ. P. 1.280(c)(1), it is not a departure from the essential requirements of law to allow discovery of financial records, provided that conditions are imposed to limit unnecessary dissemination and otherwise protect their privileged nature according to Schaeffer v. Medic, 394 So. 3d 128 (Fla. 3d DCA 2024). *See* §§ 2.05; 2.10[1]; 14.10; 16.08; 16.11.

Sanctions

The opportunity to be heard regarding the imposition of sanctions is a right to respond to the notice of sanctions. In Oltchick v. Parenti, 392 So. 3d 608 (Fla. 5th DCA 2024), the Fifth DCA held that an opportunity to respond to an order that happens within moments of the order is not a meaningful opportunity to respond.

See § 15.04A.

Even if the trial court engages in *Kozel* factor analysis, findings in support of dismissal of the action for discovery violations must be accurate and supported in the record. In Reaction Rehab, LLC v. Fletcher, 386 So. 3d 984 (Fla. 3d DCA 2023), the Third DCA reversed a dismissal where the trial court's written order stated "[t]he Court has further considered the factors set forth in [Kozel], and each factor weighs in favor of dismissal," but it only included express findings regarding four of the six factors, failing to address whether the client was personally involved in the disobedience and whether the delay created significant problems of judicial administration. *See* §§ 14.24; 15.05; 15.14; 15.16.

Statutory Immunity

Because Fla. Stat. § 768.28(6) is part of a statutory waiver of sovereign immunity, it must be strictly construed. Notices sent by the claimant to various other entities does not satisfy the requirements of Fla. Stat. § 768.28(6) against a governmental entity according to Staly v. Izotova, 2024 Fla. App. LEXIS 9870 (5th DCA Dec. 20, 2024). *See* § 1.49.

Any statute purportedly waiving sovereign immunity is strictly construed, and any waiver must be clear and unequivocal according to Sch. Bd. of Broward Cnty. v. State Farm Mut. Auto. Ins. Co., 390 So. 3d 27, 29 (Fla. 4th DCA 2024). For example, Florida's Fair Housing Act does not include an express waiver of sovereign immunity. In City of Pompano Beach v. Coral Rock Dev. Grp., LLC, 49 Fla. L. Weekly D2425 (Fla. 4th DCA December 4, 2024), the Fourth DCA held that, absent an express waiver provision or unambiguous text permitting claims against governmental entities in the Fair Housing Act, the City's protection from suit remains in place against a claim of discrimination under the Act in land use decisions. *See* § 1.49.

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Revision

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